***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION No: 23667 of 2004

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% 17.03.2005

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Between:

Smt. B. Lalitha, W/o. B. Nagender,
R/o. Rambagh, Attapur, Ranga Reddy District.

..... PETITIONER

AND

1 The State of A.P. rep by Principal Secretary, Home Department, Secretariat Buildings, Saifabad, Hyderabad.
2 Director General of Police, government of A.P., Lakdikapool, Hyderabad.
3 Commissioner of Police, Hyderabad City, Basheerabagh, Hyderabad.
4 Superintendent of Central Prison, Chenchalguda, Hyderabad.
5 Station House Officer, Saifabad Police Station, Lakdikapool, Hyderabad.
6 Station House Officer, Nampally Police Station, Nampally, Hyderabad.

.....RESPONDENT(S)

! Counsel for the Petitioner: MR.M.LAXMAN

^ COUNSEL FOR THE RESPONDENTS: GP FOR HOME

< Gist:

> Head Note:

? CITATIONS:

[1] 2000 ACJ 470 (SC)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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5 Station House Officer, Saifabad Police Station, Lakdikapool, Hyderabad.
6 Station House Officer, Nampally Police Station, Nampally, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or order or direction, action of the respondents No. 4 to 6, in causing the death of the petitioner's husband in the custody as illegal, arbitrary and violative of Art. 21 of Constitution of India and consequently direct the respondent No. 1 to 3 to register the criminal case against the persons responsible for causing of the death of

the petitioner's husband and further direct the respondents to pay a sum of Rs. 3,00,000/- as compensation for depriving the life of petitioner's husband and pass any other order or orders

Counsel for the Petitioner:MR.M.LAXMAN

Counsel for the Respondent No.: GP FOR HOME

The Court made the following :

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.23667 of 2004

JUDGMENT:

Petitioner seeks a *Writ of Mandamus*, to declare the action of the State, in causing the death of her husband, B. Nagender (hereinafter referred to as "the deceased"), in the custody, as illegal, arbitrary and violative of Article 21 of the Constitution of India. She also seeks the relief of direction, to register criminal case against the persons responsible, and claims compensation of Rs.3,00,000/- (Three lakhs), for deprivation of the life of the deceased.

2. The deceased was employed as a Driver on a private vehicle, at Hyderabad. An accident took place on 25-01-2000, resulting in the death of a person. F.I.R.No.42/2000 was registered against him by the Police Station, Nampally. It was being tried as C.C.No.264 of 2000 by the Court of XV Metropolitan Magistrate, Hyderabad.

3. On the ground that the deceased did not attend the Court on the subsequent dates, NBW was issued against him on 03-02-2000. On the strength of NBW, the deceased was apprehended on 08-02-2001, and on the same day, was brought to

the Court. He is said to have escaped from the Court. F.I.R.No.31/2001 was registered by the Police Station, Nampally, against him, for the offence under Section 224 I.P.C. He was apprehended thereafter on 12-02-2001. On the same day, he was sent to judicial custody, and was sent to Central Prison, Chanchalguda, as an under-trial prisoner. He died on
13-03-2001, while in judicial custody.

4. Petitioner contends that her husband (deceased), though, illiterate, was a law abiding citizen, and in fact, he voluntarily surrendered in the Police Station, soon after the accident. According to her, his non-appearance in the Court, on subsequent dates, was on account of non-service of summons, and while executing the NBWs, the Police have ill-treated and manhandled him. She states that, her husband was so frightened with the treatment accorded to him, that he tried to escape for life, when he was produced before the Court. She contends that, after apprehending him once again, the Police and Jail authorities have used third-degree methods, and he died as a result of the same. It is her case that the respondents have covered up the entire matter by distorting the facts, and a perusal of the post-mortem report, in relation to the death of her husband, would disclose the cause of death.

5. A counter affidavit is filed by the 4th respondent, Superintendent of Central Prison, Chanchalguda, Hyderabad. It is stated that the deceased, was taken as remand prisoner No.444, and accused in F.I.R.No.31 of 2001, on the strength of the remand by the Court on 12-02-2001. According to the 4th respondent, the deceased was addicted to Alcohol, ganja and showing withdrawal symptoms. The deceased was said to have been referred to Institute of Mental Health for psychiatric treatment on 01-03-2001, on the basis of the opinion rendered by the Medical Officer of the Prison. The Institute of Mental Health, in turn, is stated to have advised that the deceased-prisoner be shown to Physician and accordingly, he was sent to Osmania General Hospital, on
03-03-2001. The Physician of that hospital had prescribed certain treatment, and on 12-03-2001, the deceased is said to have been taken to Neuro Physician of Osmania General Hospital, Hyderabad.

6. On 13-03-2001 the deceased was sent once again to the Institute of Mental Health, and on their advice, was brought to the Osmania General Hospital, for medical care, and there he breathed his last. F.I.R.No.23/2001 under Section 176

Cr.P.C. was registered, consequent on the death of the deceased-Nagender. An inquiry by the Special Executive Magistrate, Hyderabad, is stated to have been ordered, and the report is yet to be submitted.

7. After hearing the matter, at length, this Court found that the counter affidavit did not prima facies depict to the correct picture, particularly, having regard to the post-mortem report. Thereupon, the 4th respondent filed additional counter affidavit, stating that the counter affidavit filed by him, is based upon the reports of the Prison Medical Officer; the Doctors of Osmania General Hospital, and Institute of Mental Health, Hyderabad.

8. Learned counsel for the petitioner submits that the husband of the petitioner died on account of the physical injuries inflicted upon him, by the Police and Jail authorities, and that the counter affidavit does not reveal the correct facts. He submits that, after realizing that the injuries inflicted upon the deceased were serious enough, the respondents started inventing theories of the alleged addiction and giving a semblance of treatment. According to him, the medical record was cooked-up, to cover the misdeeds, and the entire version of the respondents is falsified by the post-mortem report. Placing reliance upon the judgment of the Supreme Court in ***Ajab Singh v. State of U.P.***,[1] learned counsel submits that it is a fit case of awarding damages and initiation of action against the persons responsible.

9. Learned Government Pleader for Home, on the other hand, submits that the record maintained by the Jail authorities as well as the various Hospitals, where the deceased was treated, discloses that he was addicted to intoxicants, and on account of abrupt stoppage of the same, he was showing withdrawing symptoms, and consequently died. He contends that the death of the deceased is not due to any acts of negligence or highhandedness on the part of the respondents, and in that view of the matter, the question of initiating any action, or payment of compensation, does not arise. Learned Government Pleader further submits that soon after the death of the deceased, the mater was informed to the National Human Rights Commission and other agencies and the inquiry conducted by the concerned authorities, disclosed that the death was not attributable to any acts on the part of the Prison or Jail authorities.

10. Nagender, the deceased, was a resident of a village. He came to Hyderabad, in search of employment, and was working as a Driver with a private agency at a

salary of Rs.3,500/- per month. On 25-01-2000, an accident took place, involving the vehicle bearing No.AP-13-U-3838, driven by Nagender. It resulted in death, of a pillion rider of a scooter. Crime No.42/2000 was registered by the Police Station, Nampally. On the next day, i.e. on 26-01-2000, He surrendered before the Police. Subsequently, he was released on bail. The case was being tried as C.C.No.264 of 2000, on the file of the XV Metropolitan Magistrate, Hyderabad.

11. NBW was issued against the deceased-Nagender, on account of the failure to appear before the Court. He was arrested on 08-02-2001, and brought to the Court. He is said to have fled away from the Court premises. Crime No.31/2001 was registered in Police Station, Nampally, under Section 224 I.P.C. On 12-02-2001, he was apprehended, and on the same day, he was sent to judicial custody. He died, while in judicial custody, i.e., exactly one month from the date of the remand. While the petitioner contends that the death occurred on account of the third-degree methods used by the Police and Prison authorities, the respondents deny the same and attribute the death to the addiction of the deceased, to alcohol and other intoxicants, and to the withdrawing symptoms. The petitioner filed a copy of the report of the post-mortem, conducted on the dead body of the deceased. The post-mortem was conducted on 15-03-2001, on a requisition made by Police Station, Dabeerpura, within whose jurisdiction the Central Prison, Chanchalguda, is situated. The Medical Officer, who conducted the post-mortem, noticed the following ante-mortem injuries, on the body of the deceased:

1. "A linear abrasion of 10 x 3 cms. vertically placed over the back of right shoulder with dark brown scabs.
2. Abrasion of 2 x 2 cms. over the right knee with dark brown scab.
3. Sutured wound of 2 x 1 cms. placed just below the injury No.2.
4. Abrasion of 2 x 1 cms. over the back of the left elbow, dark brown colour.
5. Abrasion of 1 x 1 cms. over the left knee, dark brown in colour.
6. Contusion of scalp 12 x 10 cms. over the occipital area.
7. Contusion of left tempro-fronto parietal area of 12 x 10 cms. with contusion under left temporal muscle.
8. Left black eye of 5 x 4 cms. present.
9. Collection of blood in an area of 5 x 4 cms. under surface of steenusu."

12. As to the cause of the death, the Medical Officer opined as under:

"Due to head injury. However viscera and blood sent for chemical analysis".

13. A specific reference is made to the post-mortem report, in the affidavit filed in support of the writ petition. The correctness of the post-mortem report is not disputed by the respondents. While the post-mortem clearly indicated that there existed as many as 9 injuries, some external and other internal, on certain vital parts of the body, the counter affidavit filed by the 4th respondent attributes the death of the deceased exclusively to the addiction to alcohol. It is necessary to extract the relevant portion of the counter affidavit.

"**Para-3**: I submit that the prisoner is addicted to alcohol, Ganja and was showing withdrawal symptoms. The Medical Officer of this Prison opined to send the accused B. Nagender to Institute of Mental Health, Hyderabad for psychiatric opinion for abnormal behaviour, ataxia examination and necessary Medical treatment on 1.3.2001. Accordingly, the accused was sent to Institute of Mental Health, Hyderabad on 1.3.2001 through Police Escort. The Medical Officer of Institute of Mental Health, Hyderabad examined the accused/patient and advised "to be shown to Physician and advised to send the patient along with reception order". The Medical Officer of this Prison referred the accused/Patient to Osmania General Hospital, Hyderabad for Physician opinion on 3.3.2001 through Police escort. The Physician (Medical Unit-6) of Osmania General Hospital, Hyderabad examined the patient and prescribed treatment. From 03.03.2001 to 11.03.2001 he was treated in Prison Hospital as advised by the Physician (Medical Unit – 6) of Osmania General Hospital, Hyderabad. On 12.03.2001 he was referred to Osmania General Hospital, Hyderabad and examined by Neuro Physician who prescribed treatment and also advised to refer him to Institute of Mental Health, Hyderabad for Psychiatrist opinion. On 12.03.2001 after returning from Osmania General Hospital, Hyderabad, he was provided treatment as advised by Neurologist of Osmania General Hospital in Central Prison, Hyderabad.

On 13.3.2001, the accused was sent to Institute of Mental Health, Hyderabad through police escort, with a request to provide necessary medical treatment in view of his health condition. The Medical Officer at Institute of Mental Health examined the accused and stated in O.P. Chit as under:

"Mr. Nagender who is referred by your office is examined in the O.P. today. He is in acute confused state, alcohol withdrawal delirium. He has dehydration and respiration distress. His condition is a Medical Emergency and has to be treated by Physician in Emergency Medical Ward.

Patient may be sent to Osmania or Gandhi General Hospital for Emergency Medical Management. This is for your kind information".

14. On the basis of this requisition, the deceased was sent to the Osmania Hospital on 13-03-2001, and he died there. It is rather shocking and surprising that such a distorted picture was presented as to the death of a person, who was in the prison,

as an under-trial prisoner, for a period of one month, before his death.

15. Learned Government Pleader for Home had made available to his Court, the relevant files maintained by the 4th respondent; Police Station, Nampally, and Police Station, Dabeerpura. In the records maintained by the Jail Authorities, various prescriptions given by the Prison Medical Officer, the Institute of Mental Health and Osmania General Hospital, at various points of time, are furnished. A perusal of the same discloses that at no point of time, any injuries, on the body of the deceased were referred to. An endorsement as to the alleged intoxication of the deceased was made in the health record maintained by the Prison, at a last stage, with a green ink pen, obviously to cover up the misdeeds. In the medical prescriptions and diagnosis at the Osmania General Hospital, only on the slip, dated 13-03-2001, i.e., on the date of death, the Doctor, who treated the deceased, pointed out the alleged addiction. Not a single wound or injury, much less, the consequences thereof, were mentioned. To say the least, the conduct of the Medical Officers, who treated the deceased, while he was alive, is totally unprofessional, dishonest and inhuman. They appear to have forgotten that they belong to a noble profession of saving lives, and have used their positions to cover up an inhuman and beastly acts of killing a person, who is in custody.

16. Soon after the death of the deceased, F.I.R.No.23/2001 was registered in the Police Station, Dabeerpura. The investigation was entrusted to one Sub-Inspector of Police, by name, Turab Ali. The investigation undertaken by him proceeded on the correct lines up to the stage where he addressed a letter dated 28-04-2001, to the Professor, Department of Forensic Medicine, Osmania Medical College, Hyderabad, with a request to clarify about the nature of injuries, found on the body of the deceased, and pointed out in the post-mortem report, and certain other aspects relating thereto. He wanted to be very precise, and framed three questions, on which he wanted clarification from the Professor. The questions read as under:

1. Out of the (9) injuries, as pointed out by you in the PME Report, which are external injuries and which are internal injuries, with particulars of the age of the injuries?

2. Whether the nature of the injuries noticed by you, are of ACCIDENTAL TYPE or of any HOMICIDAL type. In case, if it is due to Homicidal causes, Please clarify as to by what type of weapons or means, such injuries can be caused ?

3. Whether the injuries noticed by can cause the DEATH of the deceased or other-wise ?

17. This was promptly replied by the Professor, Department of Forensic Medicine, through his letter dated 30-04-2001. The answers given to the questions are as under:

1. The 1 to 8 injuries mentioned in the Postmortem Examination Report are External Injuries and the 9th injury was the Internal injury, the 2nd internal injury was sub arachnoid haemorrhage diffusely present over the Brain and possible with the external injuries mentioned in No.6th and 7th and 8th of the Injury column.

   The age of the injuries is appears to be about Five days.

2. The nature of the injuries mentioned in the P.M.E. Report can be possibly produced by a Blunt Force Impact. The accidental or homicidal nature can not be definitely ascertained, as they can be produced either way.

3. In ordinary course the nature of injuries mentioned in P.M.E. Report can cause the death of the deceased."

18. Two months thereafter, the final report of post-mortem was furnished on 19-06-2001 by the Professor, Department of Forensic Medicine, and the cause of the death of the deceased was opined to be on account of "head injury". From the answers furnished by the Forensic Department, to the questionnaire of the Investigating Officer, it is evident that the injuries were five or six days old, prior to the death, and the death occurred on account of "head injury".

19. From this stage onwards, the direction of the investigation was changed to the one of covering up the cold-blooded murder of the deceased, while in judicial custody. He made a semblance of recording the statements of some inmates of the prison and recorded a uniform version, to the effect that the deceased was very weak and used to fall down even while walking. An excuse was invented to lay cause for head injury. The investigating officer has the adocity to find fault with the report of port-mortem and the expert opinion, drew by the Professor of that department. In his letter, dated 28-05-2001, addressed to the Deputy Commissioner of Police, South Zone, Hyderabad, the Investigating Officer, tried to brand the post-mortem report as misleading, on the ground that it did not accord with the inquest panchanama. The relevant portion of the said letter/report reads as under:

"…In this case the said two Medical Officers have neglected the important

> contents of the Inquest panchanama of the dead body of the deceased conducted by the M.R.O. Inquest. As a result of which the investigating agency and the medical agency have adopted a quite in-different findings in respect of the injuries available on the dead body of the deceased and it is also found that the medical agency over-looked the finding of the M.R.O. Inquest, Hyd., and incorporated as many as eight external injuries in the PME report and as a result of which the medical agency instead of giving a proper assistance in the investigation of the case to the investigating agency, they are mis-leading..."

20. The postmortem report and the analysis of Forensic Science department, constitute an important and most reliable steps in an investigation. They are undertaken by persons not interested in the matter and their findings are based on objective physical observations. Their veracity can never be tested from the standpoint of conformity with the inquest.

21. To say the least, the said observation is nothing, but a ploy, invented to extricate those who are responsible for the death of an under-trial prisoner. The entire record discloses that, except the Department of Forensic Science of the Osmania General Hospital, all officials and authorities, be them, from the Department of Prisons, Institute of Mental Health, different wings of Osmania General Hospital, or the Investigating Officers, at various stages, have either resorted to illegal acts, or aided in, to cover up the grave act of killing an under-trial prisoner. The various investigations, that were ordered at difference stages, have only been used as devises, to cover up an otherwise clear and glaring act of highhandedness.

22. It is rather surprising that person who was hale and healthy and was in a position to run away from the Court, was depicted as though he became so weak and pale, within one month from the date of apprehension of re-arrest, that he just died out of the said weakness. A further theory of his having been addicted to alcohol etc., was invented with impunity. The injuries that were found on the dead body, which were just five or six days old, prior to his death, were beyond doubt, inflicted on the deceased, while he was in the prison.

23. Since the scope of the writ petition is limited, this Court does not intend to express any final opinion about the involvement of various officials, in the murder of the deceased-Nagender. It is a matter, which needs to be taken up at appropriate level.

24. Howsoever wide the powers of the State may be, to regulate the conduct of individuals, and punish those who are found guilty, there does not exist any justification for it, to kill a person, just on the ground that he escaped by the police custody. It is not as if the deceased was a notorious criminal. The only allegation against him was, that he drove a vehicle in a rash and negligent manner.

The fact that he was a law-abiding nature, is evident from the very fact that he surrendered before the police, within few hours from the time of accident. Having regard to the misdeeds committed on the deceased, while in judicial custody, this Court has no hesitation in taking the view, that the deceased ran away from the Police custody, on account of the frightening circumstances created by the Police, who handled him. Once he was re-arrested on 12-02-2001, another case was registered against him for the offence under Section 224 I.P.C. It was for the prosecution to prove his guilt, and get him punished. There does not exist any justification for causing fatal injuries to him, resulting in death.

25. In ***Ajab Singh v. State of U.P.*** *(1 supra)*, the Supreme Court dealt with the case of identical nature. It was a case of custodial death of a person accused of, offences under Sections 302 and 498-A I.P.C. In that case, the jail authorities pleaded that the prisoner died, on account of jaundice, and the same was belied by the post-mortem report, which revealed fatal injuries, as in the present case. Except the nature of injuries inflicted by the jail authorities, the present case stands on the same footing. The Supreme Court awarded a compensation of Rs.5 lakhs (Five lakhs), to the dependants of the deceased, and ordered investigation by the C.B.I. The compensation so awarded, was without prejudice to the right of the legal representatives of the deceased, to claim compensation in private law. The State Government was directed to initiate disciplinary proceedings against those, who are found responsible for the death of the deceased.

26. Following the above judgment of the Supreme Court, and having regard to the findings recorded above, the writ petition is allowed, to the following effect:

a. The State of Andhra Pradesh, the 1st respondent herein, shall cause an inquiry into the death of the deceased, B.Nagender, accused in Crime No.31 of 2001, of Police Station, Nampally, through C.B.C.I.D., and take appropriate action on the persons, who are found responsible for the same.

b. The 1st respondent shall pay a sum of Rs. 3 lakhs (Three lakhs), to the petitioner herein, within two months from the date of receipt of copy of this judgment.

c. Out of the same, a sum of Rs.1 lakh (One lakh), each, shall be kept in a fixed deposit, in the name of the petitioner and her two daughters, viz.,
Kum. Swathy and Kum.Jyothi, in a Nationalized Bank, at least, for a period of three years, and they shall be entitled to withdraw the interest accrued thereon, once in six months.

d. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 17 –03-2005.

Note:

L.R. copy to be marked.

(B/O)

KO

To

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1 The State of A.P. rep by Principal Secretary, Home Department,

Secretariat Buildings, Saifabad, Hyderabad.
2 Director General of Police, Government of A.P., Lakdikapool,

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3 Commissioner of Police, Hyderabad City, Basheerabagh, Hyderabad.
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5 Station House Officer, Saifabad Police Station, Lakdikapool,

Hyderabad.
6 Station House Officer, Nampally Police Station, Nampally, Hyderabad.

7. 2 CCs to G.P. for Home, High Court of A.P., High Court Buildings,

Hyderabad (OUT).

8 The Under Secretary, Ministry of Law, Justice and Company

Affairs, Union of India, New Delhi.

9 The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

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